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EXAMINER

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Application/Control Number: 10/763,868
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/763,506
Filing Date: January 23, 2004
Appellant(s): WINSOR, GERALD W.

Jonathan O. Owens (Reg. 37,902)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06/27/2011 appealing from the Office action mailed 02/02/2011.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief is correct.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2006/0155400 A1

LOOMIS

07-2006

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-27 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by **Loomis**

(US Publication No. 20060155400 A1)

As per claim 1, Loomis teaches a method comprising: identifying a preference (**a user pre-selects preferred songs for a user playlist, paragraph [0007]**); selecting a content item based on the preference (**the first song of the playlist is selected, paragraph [0007]**); storing an initial portion of the content item in a temporary storage cache (**Figure 3A, where X seconds of five pre-buffered songs are stored for playing. See also paragraphs [0007], [0047], where a pre-cache stores a small portion in a buffer and [0022], a local cache of the first ten seconds of a content item**); receiving a request for the content item (**paragraphs [0007] and [0043], where a user requests a target song**); streaming the initial portion of the content item from the temporary storage cache to a stream synchronizer (**paragraph [0021]-[0024], i.e. pile driver**) in response to the request (**paragraph [0068]**); producing a resultant stream using the initial portion of the content item (**paragraph [0007], pre-buffered small portion of the song**); and seamlessly transitioning the resultant stream from the initial portion of the content item to an entire segment of the content item (**Abstract and paragraphs [0007] and [0047], where “by the time the reader finishes reading the pre-buffered ten seconds of S_5, a sufficient part of the rest of S_5 is already there and is ready to be read. Therefore, there is no interruption between the first ten seconds of S_5 and the rest of S_5. In this way, the user experience is enhanced and waiting time is minimized.”**).

As per claim 2, Loomis teaches a method wherein the preference is associated with a user (**paragraphs [0005] and [0007]**).

As per claim 3, Loomis teaches a method wherein the preference includes a playlist (**Figure 1A, playlist and paragraph [0005]**).

As per claim 4, Loomis teaches a method wherein the resultant stream mirrors the entire segment of the content (**paragraph [0007]**).

As per claim 5, Loomis teaches a method further comprising identifying a user associated with the preference (**paragraph [0007]**).

As per claim 6, Loomis teaches a method wherein the content includes one of a document, an image, audio data, and video data (**Abstract, audio data -song**).

As per claim 7, Loomis teaches a method further comprising transmitting the entire segment of the content to a stream buffer in response to the request (**paragraphs [0021]-[0024]**).

As per claim 8, Loomis teaches a method wherein the transmitting the entire segment of the content occurs simultaneously with streaming the initial portion (**paragraph [0007] and [0075]**).

As per claim 9, Loomis teaches a method wherein the seamlessly transitioning occurs in real-time (**paragraph [0021]**).

As per claim 10, Loomis teaches a method further comprising presenting the resultant stream beginning with the initial portion and subsequently followed by a portion of the entire segment (**Abstract and paragraphs [0007], [0047] and [0068]**).

As per claim 11, claim 11 recites substantially the same limitations as claim 1. Therefore, the rejection for claim 1 applies equally as well to claim 11.

As per claim 12, Loomis teaches storing an initial portion of a selected content item in a temporary storage cache (**paragraph [0007] and [0047], a small portion of a target song is pre-cached**); streaming the initial portion of the selected content item from the temporary storage cache to a stream synchronizer (**paragraph [paragraph [0021] and [0022]]**); simultaneously loading an entire selected content item to the stream synchronizer while streaming the initial portion (**paragraphs [0007], [0047], and [0068]**); producing a resultant stream comprising the initial portion of the selected content item (**paragraphs [0047] and [0007]**); and seamlessly transitioning the resultant stream from the initial portion of the content item to the entire content item (**paragraphs [0047], [0068] and [0007]**).

As per claims 13-17, the rejection for claims 1, 6, and 9 applies fully.

As per claim 18, Loomis teaches a method further comprising displaying the resultant stream (**paragraph [0048], Figure 2**).

As per claim 19, claim 19 is substantially the same as claim 1, but in system form rather than method form. Therefore, the rejection for claim 1 applies equally as well to claim 19.

As per claim 20, claim 20 is substantially the same as claim 1, but in system rather than method form. Therefore, the rejection for claim 1 applies equally to claim 20.

As per claim 21, Loomis teaches a system wherein the client device is configured to store the initial portion of the content prior to a request for the content (**paragraphs [0045], [0060] and [0061]**).

As per **claim 22**, Loomis teaches a system wherein the client device is configured to receive the entire segment subsequent to a request for the content (**Abstract and paragraphs [0007] and [0068]**).

As per **claim 23**, Loomis teaches system wherein the client device further comprises a preference data module configured for storing information relating to the content (**paragraph [0034]**).

As per **claims 24-26**, the rejection for claims 1 and 6-7 applies fully.

As per **claim 27**, Loomis teaches identifying a user (**paragraph [0007], user requesting songs of a playlist**); identify a preference (**paragraph [0007], preferred target song selected by the user**); selecting a content item based on the preference, wherein the content item is a data file having a defined beginning point and ending point (**paragraph [0034]**); prefetching an initial portion of the content item (**paragraph [0007] and [0047]**); storing the initial portion of the content item (**pre-buffered portion of a target song, paragraph [0007]**) in the temporary storage cache (**paragraph [0022] and [0047], local caching of the first ten seconds which are prebuffered**); receiving a request for the content item (**paragraph [0043], where a user requests a next song to play**); streaming the initial portion of the content item from the temporary storage cache to a stream synchronizer in response to the request (**paragraph [0047]**); producing a resultant stream using the initial portion of the content item (**paragraph [0068]**) ; and seamlessly transitioning the resultant stream from the initial portion of the content item to an entire segment of the content item before the initial portion ends (**paragraphs [0047], [0007] and [0068], where by the time the reader finishes reading the pre-buffered ten seconds of**

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S_5, a sufficient part of the rest of S_5 is already there and is ready to be read. Therefore, there is no interruption between the first ten seconds of S_5 and the rest of S_5. In this way, the user experience is enhanced and waiting time is minimized.).

(10) Response to Argument

A) “Loomis does not teach seamlessly transitioning from an initial portion of a content item to the entire content item”

As to the above point A), Examiner respectfully disagrees. In light of Appellant’s instant specification, it is very clear in Figure 7 that the present invention involves the synchronizing of an initial portion with a complete stream. Furthermore, Examiner provides a comparison of Appellant’s specification with the disclosure of Loomis as clearly anticipating the claimed invention as supported in Appellant’s specification.

Appellant’s specification states on page 3:

“Methods and apparatuses for streaming content are described for presenting the content such that a delay time between requesting the content and utilizing the content is minimized. In one embodiment, methods and apparatuses for streaming content store an initial portion a selected content within a temporary storage cache; stream the initial portion of the selected content from the temporary storage cache to a stream synchronizer; simultaneously load an entire segment of the selected content to the stream synchronizer while streaming the initial portion; produce a resultant stream comprising the initial portion of the selected content; and seamlessly transition the resultant stream from the initial portion of the content to the entire segment of the content.”

Appellants’ have amended the instant claim to recite “entire content item” instead of “entire segment of the content,” however such amendment fails to indicate any controlling definition of “entire content item” beyond the broadest reasonable interpretation of claim

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language. In particular, the disclosure of Loomis disclosure in paragraph [0007], **“The apparatus starts to play the pre-buffered small portion (initial portion) of the target song and starts to download the rest of the target song at the same time. Because the system is so configured that the time for playing the pre-buffered small portion is longer than the initial buffering time for the rest of the target song, the entire target song is played smoothly (transitioning to the entire content item). In other words, there is no unintended delay between the first small portion and the rest portion either.”** clearly reads upon the broadly claimed limitations as supported by Appellant’s specification. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Appellant also appears to argue that Loomis explicitly teaches away from streaming the entire content item.

B) With respect to claim 27, “Loomis does not teach seamlessly transitioning the resultant stream from the initial portion of the content item to the entire content item before the initial portion ends.” and with respect to claim 1, “Loomis does not teach seamlessly transitioning from an initial portion of a content item to the entire content item.”

As to the above point B), Examiner respectfully disagrees. Examiner submits that Figure 7 of Loomis clearly disclose the above claimed limitations. Furthermore, with regard to “seamlessly transitioning...before the initial portion ends,” Examiner submits that by definition of seamlessly transitioning, a transition must be made just prior to the expiration of the X seconds of an initial portion in order to be seamless. Loomis clearly teaches in paragraph [0007] the following representation of the claimed transition,

“The apparatus starts to play the pre-buffered small portion of the target song and starts to download the rest of the target song at the same time. Because the system is so configured that the time for playing the pre-buffered small portion is longer than the initial buffering time for the rest of the target song, the entire target song is played smoothly. In other words, there is no unintended delay between the first small portion and the rest portion either.”

To this point, Examiner also submits paragraph [0047], where Loomis discloses that **“by the time the reader finishes reading the pre-buffered ten seconds of S_5, a sufficient part of the rest of S_5 is already there and is ready to be read. Therefore, there is no interruption between the first ten seconds of S_5 and the rest of S_5. In this way, the user experience is enhanced and waiting time is minimized.”** Therefore, Loomis anticipates the claim invention.

C) In response to Applicant's argument f. Claim 27 applicant argues "Also, Loomis does not teach a stream synchronizer that synchronizes the two received data streams and seamlessly transitions from the first data stream to the second data stream.

As to the above argument C), Examiner respectfully disagrees. Examiner submits that Appellant's argument that the references fail to show certain features of appellant's invention, it is noted that features upon which Appellant relies (e.g. “transitions from a first data stream to a second data stream”) are not recited in the rejected claims.

(11) Related Proceeding(s) Appendix

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Joiya M. Cloud
September 20, 2011

Conferees:

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